

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SONIA LIM, surviving spouse of EDUARDO
LIM, and for the marital community comprised
thereof,

Plaintiff,

v.

FRANCISCAN HEALTH SYSTEMS, a
corporation doing business in Washington and
CATHOLIC HEALTH INITIATIVES, a
corporation doing business in Washington,

Defendants.

Case No. C06-5191 FDB

**ORDER COMPELLING DISCOVERY
AND IMPOSING SANCTIONS**

This matter comes before the Court on Defendants motion to compel discovery and for the imposition of sanctions. After having reviewed all materials submitted by the parties and relied upon for authority, the Court is fully informed and hereby grants the motion to compel discovery and awards terms.

INTRODUCTION AND BACKGROUND

This suit for employment discrimination was filed by Plaintiff on March 10, 2006 in Pierce County Superior Court and removed to this Court by Defendants on April 10, 2006. Trial is scheduled for May 29, 2007. The deadline for disclosure of expert witnesses and their opinions was

1 November 20, 2006. Discovery cutoff is January 29, 2007.

2 Plaintiff's Initial Disclosures were due on August 4, 2006. Despite numerous requests for
3 Defendants' counsel, they have not been produced. On August 17, 2006 Plaintiff was served with
4 Defendants' First Set of Interrogatories and Request for Production. Responses were due on
5 September 21, 2006. They have not been produced. On August 30, Plaintiff requested a 30 day
6 extension to respond to the discovery requests. Defendants agreed to extend the deadline to October
7 2, 2006. Plaintiff failed to comply with this extension.

8 On November 1, 2006 the parties conducted a Rule 37 conference to resolve their discovery
9 dispute. During the conference Plaintiff's counsel agreed to provide the Initial Disclosures no later
10 than November 6, 2006 and the discovery responses no later than November 10, 2006. Plaintiff
11 failed to comply with these deadlines. Defendants' counsel then advised Plaintiff's counsel that a
12 motion to compel would be filed if Plaintiff failed to provide the overdue discovery by November 14,
13 2006. On the due date, November 14, Plaintiff's counsel requested that Defendant delay filing the
14 motion until November 20 as he was to meet with his client to complete the answers to discovery.
15 Defendants again provided Plaintiff with an extension to November 20, 2006. Again, Plaintiff failed
16 to provide the requested discovery. This motion followed.

17 **DUTY TO COMPLY WITH DISCOVERY REQUEST**

18 Defendants request an order compelling Plaintiff to provide Initial Disclosures and complete
19 responses to the First Set of Interrogatories and Request for Production. As Defendant's statement
20 of facts are not contested, the Court adopts the facts as set forth in Defendant's motion.

21 Fed .R. Civ. P. 26(a)(1) requires parties to disclose supportive witnesses and documents,
22 damages computations and insurance information "without awaiting a discovery request" at or within
23 14 days after the scheduling conference. Plaintiff has inexcusably failed to provide his initial
24 disclosures given that they were due no later August 4, 2006. Responses to interrogatories and
25 request for production were due September 21, 2006. These deadlines were extended by

1 Defendants, yet remain unfulfilled.

2 Where the response to discovery is unsatisfactory, the party seeking discovery may file a
3 motion to compel discovery, including a copy of the discovery propounded and the response thereto.
4 Fed. R. Civ. P. 37. An "evasive or incomplete disclosure, answer, or response is to be treated as a
5 failure to disclose, answer, or respond." Fed. R. Civ. P. 37(a)(3). It is well established that a failure
6 to object to discovery requests within the time required constitutes a waiver of any objection.

7 Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9th Cir. 1992).

8 The Court finds it appropriate and necessary to compel discovery.

9 SANCTIONS

10 Rule 37(c) states: (1) A party that without substantial justification fails to disclose
11 information required by Rule 26(a) or 26(e)(1), or to amend a prior response to discovery as
12 required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a
13 trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in
14 lieu of this sanction, the court, on motion and after affording a opportunity to be heard, may impose
15 other appropriate sanctions. In addition to requiring payment of reasonable expenses, including
16 attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under
17 Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the
18 disclosure.

19 In order to avoid sanctions, Plaintiff has the burden of establishing that he had a "substantial
20 justification" for failure to respond and that any late disclosure is "harmless." Yeti by Molly, Ltd. v.
21 Deckers Outdoor Corp., 259 F.3d 1101, 1107 (9th Cir. 2001). Counsel's purported justification is
22 unsubstantial. Counsel's personal difficulties do not provide good cause for a total lack of
23 compliance with discovery rules. The Defendants provided numerous extensions to Plaintiff and yet
24 there was no response. The Court finds that a sanction in the amount of a reasonable attorney's fee
25 incurred by Defendants in bringing this discovery motion is appropriate. The Court finds that

1 \$1,260.00 is a reasonable compensation for the fees incurred by Defendants in having to bring this
2 action.

3 **CONCLUSION**

4 The Court having reviewed the pleadings and the remaining record, and for the reasons set
5 forth above,

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7 **IT IS HEREBY ORDERED:**


8 (1) Defendants' Motion to Compel Discovery [Dkt. #13] is GRANTED,

9 (2) No later than December 15, 2006, Plaintiff must provide full and complete answers
10 and responses to Defendants' First Set of Interrogatories and Requests for Production and provide
11 Initial Disclosures.

12 (3) No later than December 15, 2006, Plaintiff and /or counsel for Plaintiff must pay to
13 Defendants the sum of \$1,575.00, as terms for having filed this motion to compel.

14 (4) Failure to comply with this Order may result in immediate dismissal of this action,
15 with prejudice.

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20 DATED this 8th day of December, 2006.

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23 
24 FRANKLIN D. BURGESS
25 UNITED STATES DISTRICT JUDGE
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